affidavit of the Minister of Home Affairs referred to earlier. The subjective satisfaction of the Minister of Home Affairs is not subject to judicial review.

Accordingly, for the above reasons we would allow the appeal and set aside the order of the trial judge.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Ram Singh v Bright Steel Sdn Bhd

SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NO 434 OF 1986
LEE HUN HOE CJ (BORNEO), WAN SULEIMAN AND WAN HAMZAH SCJJ
15 AND 16 OCTOBER 1987

Labour Law – Overtime – Claim for – Appeal against decision of labour officer – Evidence unsatisfactory

In this case, the appellant was employed in 1976 and provided with accommodation. The terms of his employment were informal. He was provided with accommodation with the understanding that he kept an eye on the factory after office hours. He was dismissed in 1985 and until then he had not made any claim for overtime. Subsequently he claimed $213,939.87 for overtime. The claim was allowed by the labour officer but on appeal the learned judge of the High Court dismissed the claim. The appellant appealed.

Held dismissing the appeal: On the evidence, the appellant had not proved his case on the balance of probabilities. The learned judge was correct in holding that the evidence was unsatisfactory.

Case referred to

1 *Bonham-Carter* v *Hyde Park Hotel Ltd* (1948) 64 TLR 177 (refd)

Appeal from: Civil Appeal No 16-15 of 1986 (High Court, Kuala Lumpur)

Kevin G Danker for the appellant.
CV Das for the respondent.

Cur Adv Vult

Lee Hun Hoe CJ (Borneo) (delivering the judgment of the court): The appellant was employed in 1976 and provided with accommodation. Until his dismissal in 1985, he had never made any claim for overtime against the respondent. The terms of his employment were rather informal. He was provided with accommodation with the understanding that he kept an eye on the factory after office hours. His mere presence would act as a deterrent.

He claimed $213,939.87. This is a staggering claim. He tried to show that he was on call round the clock. He is an illiterate. He relied on a record kept by his daughter (C1) covering a period of four days in 1985 of lorries coming in and out of the factory in a claim for a period of nine years. This record was admitted by the labour officer without the maker being called. Evidence shows that the appellant's wife used to help him in his work, eg whenever he slept or was occupied elsewhere. The labour officer never differentiated between work done by the appellant and his wife. The appellant could not claim for work done by his wife.

The respondent contended that the nature of the appellant's work involved long hours of inactivity or standby employment and by virtue of 60A(8) of the Employment Act 1955, the respondent was not obliged in law to pay for such work as claimed. The labour officer did not consider this.

While we appreciate that the proceedings before the labour officer were rather informal, nevertheless we expect the labour officer to act fairly, justly and impartially. The way he dealt with the matter made him appear to be a crusader rather than acting judicially. No reasonable tribunal would find that the appellant worked for 20 hours a day for nine years on the evidence before the tribunal.

Even though the procedure is informal, it is inconceivable that the labour officer would act on hearsay evidence. The application of the principle of natural justice does not mean that the labour officer could act on what is not evidence. It is, therefore, not surprising that the learned judge found that the evidence before the labour officer was unsatisfactory.

One is reminded of the words of Lord Goddard in *Bonham-Carter* v *Hyde Park Hotel Ltd* (at p 178):

> On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the court, saying: 'This is what I have lost; I ask you to give me these damages.' They have to prove it. The evidence in this case with regard to damages is extremely unsatisfactory.

This was what happened to the present case. The learned judge had found the evidence unsatisfactory. We agree with him. On the evidence, we have no doubt whatsoever that the appellant had not proved his case on the balance of probabilities. We see no reason to interfere with the learned judge's finding. We dismiss the appeal with costs. Deposit to respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Zain & Co.*; *Shook Lin & Bok.*

Reported by *Prof Ahmad Ibrahim*